

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOBBY WILLIAM CHUNG,
Plaintiff,

v.

SAN MATEO COUNTY COURT, et al.,
Defendants.

No. C 15-03278 HRL (PR)
ORDER OF DISMISSAL

Plaintiff, who is in custody at the San Mateo County Jail and proceeding pro se, filed a civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff will be granted leave to proceed in forma pauperis in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1), (2). Pro se pleadings must,

1 however, be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
2 699 (9th Cir. 1988).

3 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential
4 elements: (1) that a right secured by the Constitution or laws of the United States was
5 violated, and (2) that the alleged violation was committed by a person acting under the
6 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

7 **B. Plaintiff's Claims**

8 Plaintiff claims that Defendant Lt. Denton of the San Mateo County Jail has been
9 denying him "phone calls, law library time in direct violation of speedy trial and effective
10 council [*sic*]." (Comp. at 3.) Plaintiff also claims that the district attorney has violated
11 his right to a speedy trial by filing a motion for a continuance on the day of trial. (*Id.*)
12 Plaintiff also claims difficulty throughout the prosecution of his case as a pro per
13 defendant. (Compl. Attach. at 1-4.) Plaintiff wants the charge against him dismissed or
14 changed to a lesser charge. (Compl. at 3.)

15 It is clear from the complaint that state criminal proceedings are currently pending
16 or ongoing. Under principles of comity and federalism, a federal court should not
17 interfere with ongoing state criminal proceedings by granting injunctive or declaratory
18 relief absent extraordinary circumstances. See Younger v. Harris, 401 U.S. 37, 43-54
19 (1971); cf. Gilbertson v. Albright, 381 F.3d 965, 979-80 (9th Cir. 2004) (en banc)
20 (finding damages action based upon constitutional challenge to pending state proceedings
21 implicates Younger principles because in order to determine damages the district court
22 must first decide whether there has been a constitutional violation). Federal courts should
23 not enjoin pending state criminal prosecutions absent a showing of the state's bad faith or
24 harassment, or a showing that the statute challenged is "flagrantly and patently violative
25 of express constitutional prohibitions." *Id.* at 46, 53-54 (cost, anxiety and inconvenience
26 of criminal defense not kind of special circumstances or irreparable harm that would
27 justify federal court intervention). Nothing in the complaint suggests there are
28 extraordinary circumstances requiring this court's interference in state court criminal

proceedings. Where, as here, Younger abstention is appropriate as to a request for declaratory or injunctive relief, and the plaintiff does not seek damages, the court may not retain jurisdiction and must dismiss the action. See Juidice v. Vail, 430 U.S. 327, 348 (1977); Columbia Basin Apartment Ass'n v. City of Pasco, 268 F.3d 791, 799-801 (9th Cir. 2001); see also Gilbertson, 381 F.3d at 981 (when damages are sought and Younger principles apply, it is appropriate for the federal court to refrain from exercising jurisdiction temporarily until state proceeding no longer pending).

CONCLUSION

For the foregoing reasons, this action is hereby DISMISSED, without prejudice to returning to federal court once his state court proceedings have concluded and he has exhausted all necessary remedies.

DATED: 8/25/15


HOWARD R. LLOYD
United States Magistrate Judge